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QUESTION PRESENTED

Whether the Court of Claims erred in awarding, as just compensation for a requisitioned vessel, a sum equal to the market value, at the time of the taking, for comparable vessels in an active market for such vessels.

STATUTE INVOLVED

The Act of June 29, 1936, Sec. 902, 49 Stat. 2015-2016, as amended by the Act of August 7, 1939, Sec. 3, 53 Stat. (Pt. 2) 1255, 1256 (46 U. S. C. 1242), provides in pertinent part:

SEC. 902. (a) Whenever the President shall proclaim that the security of the national defense makes it advisable or during any national emergency declared by proclamation of the President, it shall be lawful for the Commission to requisition or purchase any vessel or other watercraft owned by citizens of the United States, or under construction within the United States, or for any period during such emergency, to requisition or charter the use of any such property. The termination of any emergency so declared shall be announced by a further proclamation by the President. When any such property or the use thereof is so requisitioned, the owner thereof shall be paid just compensation for the property taken or for the use of such property, but in no case shall the value of the property taken or used be

deemed enhanced by the causes necessitating the taking or use. * * *

* * * *

(d) In all cases, the just compensation authorized by this section shall be determined and paid by the Commission as soon as practicable, but if the amount of just compensation determined by the Commission is unsatisfactory to the person entitled thereto, such person shall be paid 75 per centum of the amount so determined and shall be entitled to sue the United States to recover such further sum as, added to said 75 per centum will make up such amount as will be just compensation therefor, in the manner provided for by section 24, paragraph 20, and section 145 of the Judicial Code (U. S. C., 1934 edition, title 28, secs. 41, 250).

STATEMENT

On February 1, 1942, the United States, acting through the agency of the Maritime Commission and pursuant to the Act of June 29, 1936, as amended, *supra*, requisitioned and took possession of petitioner's yacht, the *Geoanna*, a 112 foot auxiliary steel schooner (R. 4). The court below found that the vessel had been built in 1934 at a cost of \$120,000;¹ that she had been acquired

¹ Petitioner urges that the original cost of the vessel was \$125,000 (Pet. 5). This was based on the opinion evidence of two of petitioner's witnesses: Fellows and Barrie (R. 32, 73). It was shown, however, that Fellows, a yacht builder and broker, had no experience as a builder or broker in

by petitioner from the original owner in 1938;² that she was fully equipped, certified for any ocean, and was, in all respects, in good condition (R. 4-5).

On June 2, 1942, the War Shipping Administration³ determined that the sum of \$20,000 was just compensation for the *Geoanna*, and offered to pay petitioner such sum (R. 4-5). This sum represented the War Shipping Administration's estimate at that time of the market value of the vessel (R. 38). Petitioner objected to this determination, alleging that it did not represent just compensation for the vessel (R. 5). Accordingly, pursuant to Sec. 902 (d) of the Act of June 29, 1936, as amended, *supra*, pp. 2-3, petitioner was paid \$15,000, or 75% of the \$20,000 previously administratively determined to be just compensation for the vessel (R. 5). Thereupon, petitioner brought suit in the Court of Claims to recover \$160,000 (R. 1-3). This sum represented the

handling vessels comparable to the *Geoanna* (R. 89-90); that Barrie, a ship surveyor, had only limited experience in appraising yachts (R. 68). In this aspect of the case, it is significant to note that petitioner's vice-president testified that he had been advised that there were no records as to the vessel's original cost (R. 34).

² The purchase price of the vessel was \$60,000 (R. 6, 30). Petitioner expended the sum of \$8,452.65 in improvements and additional equipment (R. 5).

³ By Executive Order 9054 (7 F. R. 837) the functions, duties, and powers conferred by law upon the United States Maritime Commission with respect to the requisition of vessels were transferred to the Administrator of the War Shipping Administration.

difference between the \$15,000 which it had been paid, and the \$175,000 which it alleged to be the fair value of the *Geoanna* (R. 2).⁴

At the trial, witnesses for the Government, who were leaders in the field of yacht design, construction, and brokerage,⁵ testified that, at the time of the taking, there was a market for vessels of the *Geoanna* class and that the price on such market was \$30,000 (R. 38, 43-48, 50, 53, 59, 64-65). They explained that even though wartime restrictions limited yachting activities, the price on the used yacht market was supported by buyers who anticipated the eventual lifting of war controls and who bought accordingly (R. 65). Petitioner introduced some evidence to show that there was no market for vessels of the *Geoanna* class, or in any event, a very restricted one (R. 32, 71). One of petitioner's witnesses was not familiar with the sales of, and had no experience in building, comparable vessels (R. 89, 90). Another witness, who testified that "so far as I

⁴ It is not clear from the record upon what basis petitioner makes this claim. Petitioner's witnesses testified that her cost to petitioner in 1938, plus improvements, was \$69,452.65 (R. 22-25, 30).

⁵ There is an active market for used yachts on both coasts, most of the sales being consummated through brokers who are regularly engaged in buying and selling used yachts (R. 84-85). Yacht brokers regularly keep records of the sales of all classes and types of yachts, including yachts of the *Geoanna* class (R. 39, 57). These records, which include sales made by other brokerage organizations, are kept to furnish a basis of comparative yacht values (R. 39).

know, there was no market at that time" (R. 71), stated that he had never been in the yacht¹ brokerage business (R. 71), and that he had had only a limited experience in appraising yacht values (R. 68). A third witness, who testified merely to the replacement value of the yacht, stated that "I don't keep up with market values of any vessel" (R. 21).

The Court of Claims found the fair and reasonable value of the *Geoanna* on February 1, 1942 to be \$30,000 (R. 5). This, the court stated, accorded "with the testimony of those witnesses who were more experienced and were in a position to be best informed on such facts" (R. 6). Accordingly, it entered judgment for petitioner in the sum of \$15,000 together with interest from February 1, 1942, to January 27, 1943, the date when the original \$15,000 was paid (R. 7).

ARGUMENT

The instant case presents merely the narrow factual issue: What was the market value of the *Geoanna* at the time of her taking? The sum awarded by the court below as just compensation was fully supported by evidence as to the market value of the vessel at the time of the taking.⁶

1. Petitioner's argument is that, in the circumstances of this case, there was no market for

⁶ Petitioner places undue reliance upon the statement in the opinion of the court below that there was no "well-established" market for the *Geoanna* class of yachts on February 1, 1942 (R. 6), incorrectly referring to

auxiliary yachts of the *Geoanna* class to give validity to the "market-value test," and that hence the Court of Claims erred in giving weight to evidence of market value and in failing to limit the basis of its award to such items as the original cost and the cost of replacement⁷ in determining the proper measure of just compensation (Pet. 7-9, 4-5). As we indicated above, an analysis of the testimony clearly shows that, at the time of the taking, there was an active market for vessels of the *Geoanna* class, and that the price on such

the statement as a "finding" that there was no market (Pet. 2). Since the record clearly shows that the determination by the court below of "fair and reasonable value" was squarely based on testimony which conclusively showed that there was such a market (*supra*, 5, 6), the court's statement must be taken to mean that there was no market in the narrow sense of that term, i. e., there was no market supported by regularly quoted prices constituting conclusive evidence of market value.

⁷ Petitioner's expert witnesses estimated the replacement cost of the *Geoanna*, depreciated at the commercial rate of 5% per year, at between \$105,000 and \$107,000 (R. 20, 72-73); and her cost to petitioner, depreciated at the same rate, at \$56,000 (R. 72-73). There is no accepted practice of applying the 5% I. C. C. commercial depreciation rate to private yachts. The depreciation of pleasure craft such as the *Geoanna* is calculated by the Riggs Scale of Yacht Depreciation, which for an eight-year-old vessel, would give a resultant figure of approximately 26 percent lower than the commercial scale. House of Representatives, Committee on the Merchant Marine and Fisheries, Committee Document No. 20, p. 382 (1943). The I. C. C. scale is appropriate only to commercial vessels with earning capacities related to problems of prudent investments.

market was approximately \$30,000.⁸ The experts, whose testimony was relied upon by the court below in making its award of just compensation (R. 6), were the outstanding leaders in the field of yacht design and construction, and their estimates of the market value were based on sales of comparable vessels⁹ evidenced by the records of the Yacht Brokers Association and their own records, as well as upon their personal knowledge of the industry (R. 38-48, 50, 53, 58-59, 64-65). The only evidence which petitioner offered in rebuttal of this showing of an active market was the testimony of witnesses who admitted no experience, or at least only a limited experience, in handling comparable vessels (R. 21, 71, 86, 89-90). It is clear that, in these circumstances, the

⁸ Petitioner states that three of the government's expert witnesses who testified that the market value of the *Geoanna* was \$30,000 at the time of the taking, had been members of the Appraisal Committee of the War Shipping Administration which had determined that the fair value of the vessel was \$20,000 (Pet. 6). Of course, the fact that, at the time of the trial, the testimony of some of the members of the Committee was favorable to petitioner's position cannot aid it in the circumstances of this case.

⁹ In this aspect of the case, it is significant to note that John G. Alden, perhaps the outstanding naval architect and broker handling yacht sales, stated that his estimate of \$30,000 was based on the assumption that the *Geoanna* had been built to either Lloyd's or the American Bureau of Shipping's specifications (R. 64). Since the *Geoanna* did not meet these specifications, she was a less valuable vessel (R. 80-81). Other factors which would adversely affect her value in the market were: that she was not designed by a well-known designer (R. 85); and that her engine was outmoded (R. 82).

amount of the award was proper, for, it is well settled that, in the ascertainment of the value of a vessel, the rule of market value must be adopted if such a market be made to appear. *The Clyde*, 1 Swabey 23; *Alaska Steamship Co. v. Inland Navigation Co.*, 211 Fed. 840 (C. C. A. 9); see *The Baltimore*, 8 Wall. 377, 386; *Standard Oil Co. v. So. Pacific Co.*, 268 U. S. 146, 155; *The President Madison*, 91 F. 2d 835, 844 (C. C. A. 9). The cases upon which petitioner relies (Pet. 8-9) are thus not in point because in those cases there was shown to be no market.

2. We submit that petitioner's argument to the effect that the decision of the court below is in conflict with the subsequent decisions of that court in *Kendall v. United States*, 71 F. Supp. 348, and *Turkington v. United States*, 71 F. Supp. 352, is wholly without merit (Pet. 12-15). Both of those cases involved the government requisition of private vessels for war purposes. In the *Turkington* case, the court, on the basis of expert testimony, found the market value of the tug *Pacific* to be \$25,000 and accepted that sum as the rate to be applied in determining just compensation. In the *Kendall* case, the court found that the evidence did not satisfactorily establish a market value of the houseboat, *Gene*.¹⁰ Accord-

¹⁰ Petitioner attempts to demonstrate the alleged conflict between the instant decision and the decision in the *Kendall* case by comparing the *Geoanna* and the *Gene* on the basis of the physical condition of the two vessels and such items as

ingly, in determining just compensation for the taking, the court, in making its award, considered such factors as her cost, her condition, her last quoted market value, and the fact that the vessel was usable for commercial purposes. It will be observed, therefore, that in the instant case, and in the *Turkington* and *Kendall* decisions, the Court of Claims has consistently followed the rule that the measure of just compensation is to be determined by the market value of the vessel at the time of the taking, unless no market be shown. Cf. *Standard Oil Co. v. So. Pacific Co.*, *supra*.

CONCLUSION

The judgment of the court below is clearly correct, and further review is not warranted. It is respectfully submitted that the petition for a writ of certiorari should be denied.

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JULY 1947.

original cost, cost to owner, cost of reproduction; it asserts that conflict exists because the court awarded the owner of the *Gene* 83% of her cost to the owner after five years, while in the instant action it was awarded only 44% of the cost of the *Geoanna* (Pet. 14-15). We submit that this argument merely tends to show that the award in the case of the *Gene* was excessive.